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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,677	03/30/2000	Stephan Meyers	4925-39	8738

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EXAMINER	
VAN DOREN, BETH	
ART UNIT	**PAPER NUMBER**
3623	

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/538,677	MEYERS, STEPHAN
	Examiner	Art Unit
	Beth Van Doren	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 August 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 10* is/are rejected.

7)☐ Claim(s) *8-9* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/06/03 has been entered.

2. The following is a non-final office action in response to the request for continued examination received on 08/06/03. Claims 1 and 2 have been amended. Claims 8-10 have been added. Claims 1-10 are now pending in this application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomson (WO 99/35830) in view of Rosen et al. (U.S. 6,260,192).

5. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomson (WO 99/35830) and Rosen et al. (U.S. 6,260,192) in view of Gordon et al. (U.S. 6,208,335).

6. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomson (WO 99/35830) and Rosen et al. (U.S. 6,260,192) in view of Maruoka (WO 83/03181).

7. Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomson (WO 99/35830), Rosen et al. (U.S. 6,260,192), and Leeke et al.

8. As per claim 1, Thomson teaches a portable media player and rating apparatus for rating media content, comprising:

a user-manipulated control dedicated for generating a signal indicating a user-supplied rating of currently played media content in response to a user-supplied rating, the user-supplied rating corresponding to one of a plurality of predefined categories of preferences (See Figure 2A and 2B which disclose ratings for media content. See also page 3, lines 24-25, page 5, lines 10-25, page 6, lines 2-17, which discuss a user-manipulated control that sends a signal to a processor containing user-supplied rating information. Predefined categories of preferences are shown by the examples "I Loved" v. "I Hated", ratings 1-5, and letters "A"-"D");

the portable media player comprising:

a memory device for storing media contents and a ratings list comprising a list of user supplied ratings associated with the stored media contents (See at least page 6, lines 21-25, page 8, lines 20-27, and figure 4, which disclose a memory device that is connected with the processor and stores rating information. The limitation "media contents" is construed as media subject matter/contents, as the definition of content suggests. Thomson does teach that the device stores media content (summary and substance) of the media in the memory of the media player); and

a processor said processor operatively connected to said user-manipulable control and to said memory device for selectively downloading and playing the stored media contents, for receiving the signal from said user-manipulable control, and for associating the user-supplied

rating indicated by the signal with the currently played media content, wherein said processor is further operable for ranking the media content in response to the user-supplied ratings in the ratings list and selectively suggesting and playing media content in said memory based on the user-supplied ratings list (See page 5, lines 26-30, and page 6, lines 4-5, and page 10, lines 26-29, and Figure 4, which discloses a processor that interacts with the user-manipulable control and receives the rating information from said control. See page 6, lines 21-25, and figure 4, which disclose a memory device that is connected with the processor and stores rating information. The media player, which is portable because it is moveable to other locations, receives the user-supplied rating and associates it with currently played media content. The ratings are dynamic and updateable because the user can continue to supply ratings over time, thus changing the rating profile of the user. The processor and memory work together to selectively determine media for the user by using the rating information in memory to rank other media content and then play the selected media content). Thomson further teaches that the device downloads media information to the player and stores this information (See pages 9-11, specifically page 8, lines 5-14, and figure 4).

However, Thomson does not expressly disclose the processor of the media player being connected to the user-manipulable control and to the memory for downloading media content.

Rosin et al. discloses the ability of the media player to download content (See figure 1, column 2, lines 44-64, column 3, lines 1-28, and column 4, lines 25-33 and 45-65, which discloses downloading media content to the media player of the user).

Both Rosin et al. and Thomson disclose a media player that allows a user to choose media and after some time the player selectively suggests media to the user. It would have been

obvious to one of ordinary skill in the art at the time of the invention for the media player of Thomson to download the media content in order to increase the speed and quality of the media delivered to the player.

9. As per claim 2, Thomson teaches a device wherein said processor receives the signal from said user-manipulable control as said processor plays the media content (See page 3, lines 21-23, page 8, lines 8-11 and 20-27, which discloses a memory device that stores media content. See page 4, lines 25-30, page 5, lines 1-15 and 26-29, and page 10, lines 17-19, which disclose a processor that enacts the media content stored in the memory device based on signals received from the user-manipulable control). However, Thomson does not expressly disclose that the memory device stores the currently played media content or that the processor plays media that is stored in the memory device.

Rosin et al. discloses that the memory device stores the currently played media content and the processor plays media stored in the memory device (See figure 1, column 2, lines 44-64, column 3, lines 1-28, and column 4, lines 25-33 and 45-65, wherein the memory device stores the downloaded media content, which the processor proceeds to play).

Both Rosin et al. and Thomson disclose a media player that allows a user to choose media and after some time the player selectively suggests media to the user. Both Rosin et al. and Thomson also disclose that a processor interacts with a memory device in order to play the media content. It would have been obvious to one of ordinary skill in the art at the time of the invention for the memory device of Thomson to store the media content along with the substance of the media and the ratings provided by the user in order to increase the speed at which the user can access the media content once he/she chooses to view/listen to it.

10. As per claim 3, Thomson teaches a device wherein the user-manipulable control includes a switch having a plurality of depressible buttons, each of said plurality of depressible buttons corresponding to one of said predefined categories of preferences (See page 6, lines 12-20, which discusses pressing keys and entering rating information associated with predetermined categories. See also figure 4 and page 5, lines 10-23, which describe a control unit (450 R) with pressable buttons that can be used to select ratings that correspond with predefined categories).

11. As per claim 4, Thomson discloses a device wherein said user-manipulable control includes depressable buttons, each of said buttons corresponding to one of said plurality of predefined categories of preferences (See page 6, lines 12-20, which discusses pressing keys and entering rating information associated with predetermined categories. See also figure 4 and page 5, lines 10-23, which describe a control unit (450 R) with pressable buttons that can be used to select ratings that correspond with predefined categories). However, Thomson does not expressly disclose that said user-manipulable control includes a multi-position switch movable among different positions, each of said positions corresponding to one of said plurality of predefined categories of preferences.

Gorden et al. discloses a user-manipulable control includes a multi-position switch movable among different positions, each of said positions corresponding to one of said plurality of predefined categories of preferences (See column 2, lines 28-31, and column 6, lines 39-49, which discloses a joystick associated with the remote control and used, with its multi-position switch, to select predefined regions).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a multi-position switch in the user-manipulabe control device because said switch would increase the ease of use of the control device for the user. A multi-position switch allows a user to more easily and more rapidly navigate through and input rating information (See Gorden et al., column 2, lines 13-17). Multi-position switches are old and well known to remote controls.

12. As per claim 5, Thomson discloses a device wherein said user-manipulable control includes depressable buttons (See page 6, lines 12-20, which discusses pressing keys on the control to enter rating information. See also figure 4 and page 5, lines 10-23, which describe a control unit (450 R) with pressable buttons that can be used to select ratings). However, Thomson does not expressly disclose that said user-manipulable control includes a multi-position switch with a pivotable lever.

Gorden et al. teaches a device wherein the multi-position switch includes a pivotable lever (See column 2, lines 28-31, and column 6, lines 39-49, which discloses a joystick associated with the remote control. The multi-position joystick has a pivotable lever).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a multi-position switch with a pivotable lever in the user-manipulabe control device because said switch with a pivotable lever would increase the ease of use of the control device for the user. A multi-position switch allows a user to more easily and more rapidly navigate through and input rating information (See Gorden et al., column 2, lines 13-17). Multi-position switches with pivotable levers are old and well known to remote controls.

13. As per claim 6, Thomson teaches a device with a user-manipulable control which is attached to a portion of a headphone (See figure 4, which discloses a user-manipulable control and a processor and the memory device attached to the media player). However, Thomson does not expressly teach that the user-manipulable control is attachable to a portion of a headphone.

Maruoka teaches a device wherein the user-manipulable control is attachable to a portion of a headphone (See figures 1, 2, and 4 and abstract, which discloses a control unit attachable to a headphone).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate headphones into the control device because the headphones would increase the user friendliness of the apparatus by offering user privacy while rating media content.

14. As per claim 7, Thomson teaches a device with a user-manipulable control (See also page 3, lines 24-25, page 5, lines 10-25, page 6, lines 2-17, which discuss a user-manipulated control that sends a signal to a processor containing rating information). However, Thomson does not expressly disclose this device attachable to a portion of a headphone wherein said portion of a headphone includes a headphone cord.

Maruoka teaches a device attachable to a portion of a headphone wherein said portion of a headphone includes a headphone cord (See figures 1, 2, and 4 and abstract, which discloses a control unit attachable to a headphone and headphone cord).

It would have been obvious to one of ordinary skill in the art at the time of the invention make the user-manipulatable device attachable to a portion of a headphone wherein said portion of a headphone includes a headphone cord because doing so would increase the ease of use of

the device by offering better quality sound. Using a wire over a signal decreases the chance of the signal being interrupted.

15. As per claim 10, Thomson teaches a method wherein the processor transmits the ratings list and the ratings list is used to suggest new media to a user (See page 5, lines 10-25, page 6, lines 15-25, page 7, lines 3-21, and figure 4).

However, Thomson does not expressly disclose that the processor is connectable to a server for transmitting the ratings list to a server, whereby the ratings list of user-supplied ratings is comparable with a list of other users.

Leeke et al. teaches a processor connectable to a server for transmitting the ratings list to a server, whereby the ratings list of user-supplied ratings is comparable with a list of other users (See at least figure 1, figure 27, column 1, lines 30-56, column 4, lines 7-20 and 50-61, column 5, lines 1-20 and 35-50, column 6, lines 44-65, and column 39, lines 30-40, wherein a server exists that transmits the user-supplied ratings and the ratings list is compared with the rating lists of others).

Both Leeke et al. and Thomson disclose media players that display personal content to a user and allow the user to provide ratings to the system. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a server for transmitting the ratings list to a server, whereby the ratings list of user-supplied ratings is comparable with a list of other users in order to more efficiently use the ratings of the users of the system. See Thomson, page 7, lines 15-21, which discusses using many methods to take advantage of the user supplied ratings.

Allowable Subject Matter

16. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

17. Applicant's arguments with regard to the teachings of Thomson (WO 99/35830) have been fully considered but they are not persuasive. In the remarks, the Applicant argues that Thomson does not teach or suggest (1) the processor selectively playing the media contents in the memory device based on the ratings, (2) generating a signal indicating a user-supplied rating of a currently played media content, (3) that the ratings are stored in the memory in which the media contents are stored, or that the media contents to be played are stored in a memory device, (4) a media player for selectively downloading and playing the media contents stored in the memory device, for receiving a signal from the user-manipulable control, and for associating the user-supplied rating indicated by the signal with the currently played media content, (5) that the media player is portable (because those skilled in the art understand that portability in a media player means that the media player can be used during movement).

In response to argument (1) of the Applicant, Examiner respectfully disagrees. At least page 6, lines 26-30, and page 7, lines 1-21, discuss a processor of the system that chooses to display media contents to the user selectively based on the ratings of other programs supplied by the user. The ratings and the media contents (summary and substance, as discussed in response to argument 3 below) are stored in the memory, as discussed in at least page 6, lines 10-25.

In response to argument (2) of the Applicant, Examiner respectfully disagrees. On page 5, lines 10-25, Thomson discusses the user generating a signal during the program viewing that indicates the user's rating of the playing program (i.e. currently playing media content). Thomson also discusses rating the currently played media content of the master program guide by a user generated a signal, the master program guide showing program information and summary information, which is media in the broadest reasonable interpretation of the term media. Therefore, Thomson does teach and suggest generating a signal indicating a user-supplied rating of currently played media content.

In response to argument (3) of the Applicant, Examiner respectfully disagrees. Thomson teaches that the ratings are stored in the memory in which the media contents are stored, as shown in at least page 6, lines 10-25. Media content is construed as media subject matter/contents, as the definition of content suggests. Thomson does teach that the device stores media content (summary and substance) of the media in the memory of the media player. These media contents are played to the user in the form of a display with which the user interacts. Examiner points out that if something more specific is meant by the term "media contents" it should be recited in the pending claims.

In response to argument (4) of the Applicant, Examiner first points out that a 35 USC § 103 rejection was established with regards to claim 1 and that Rosin et al. was relied upon to teach the downloading of media contents. Thomson et al. does teach and suggest the media player selectively ascertains and displays media contents (summary and substance) which are stored in the memory device. See at least page 6, lines 21-25, page 8, lines 20-27, and figure 4. The media player also receives a signal from the user-manipulable control and associates the

user-supplied rating indicated by the signal with the currently played media content and stores it in the memory. See the response to argument 2 above.

In response to argument (5) of the Applicant, Examiner again points out that the fact that the media player is portable appears to have no functional impact on the limitations of the claims and that making a device portable or moveable is not sufficient by itself to patentably distinguish over an old devise unless there are new or unexpected results, In re Lindberg, 194 F.2d 732, 93 USPQ 23. Furthemore, Examiner again asserts that the media player of Thomson is portable because it is moveable, such as from store to house, room to room, etc. Examiner points out that the feature of portability noted in the arguments (i.e. portability in a media player being that the media player can be used during movement) should be clearly recited in the pending claims to receive full patentable weight.

18. Applicant's arguments with regard to the teachings of Rosin et al. (U.S. 6,260,192) have been fully considered but they are not persuasive. In the remarks, the Applicant argues that Rosin does not teach or suggest (6) the media player having a memory device with the media content to be played, or (7) a user-manipulable control.

In both arguments (6) and (7) of the Applicant, examiner points out that Rosin was relied upon to teach and suggest the ability of the media player to download content, as shown in at least figure 1, column 2, lines 44-64, column 3, lines 1-28, and column 4, lines 25-33 and 45-65, which discloses downloading media content to the media player of the user. Since both Rosin et al. and Thomson disclose a media player that allows a user to choose media and after some time

the player selectively suggests media to the user, examiner maintains the 35 USC § 103 rejection set forth above.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Eyal (U.S. 6,389,467) discloses a network-enabled device that plays back media on the network based on searched addresses.

Dwek (U.S. 6,248,946) teaches delivering multimedia content over a network to a listener.

Tedesco et al. (U.S. 6,430,537) discloses priority-based media playing.

Berman et al. (U.S. 6,502,194) teaches a system for the playback of network media.

Gjerdingen et al. (U.S. 6,539,395) discloses a database in music media that provides samples to the user and stores rating information of the users.

"The Sound of Things to come" (ampcast.com) discloses a musicmatch jukebox.

"Nielson Media Research" (www.nielsenmedia.com) teaches collecting and using user ratings of media.

"MP3 playlist maker" (sassner.com) teaches software that creates playlists.

"Home of Audio-Video Softwares Up to Date" (MPEGX.com) discloses software that creates playlists.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

bvd
October 13, 2003

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